

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

1. Complainant was employed by Respondent as a waitress since January 7, 1984 and was satisfactorily performing her job duties.
2. On or about June 29, 2006, Complainant was discharged when Respondent's co-owner and manager, Frank Lombardo, told Complainant in a loud and derogatory manner that she was too old, that she could not hear well, and that she was to "get the fuck out of" his establishment.
3. At the time she was discharged, Complainant was 67 years old.
4. At the time of her discharge, Complainant's salary was \$150.00 per week, plus \$100.00 per week in tips.

CONCLUSIONS OF LAW

1. Complainant is an "employee" and Respondent is an "employer" as those terms are defined under the Act.
2. The Commission has jurisdiction over the parties and subject matter of this action.
3. Pursuant to the default order, Respondent admits the allegations of age and perceived physical handicap discrimination in the Charge of Discrimination. Section 5/7A-102(B) of the Act.
4. Complainant has demonstrated that she is entitled to back wages and reasonable attorney's fees.

DETERMINATION

Respondent is held in default on the issue of liability pursuant to the Order of Default issued November 14, 2007. Complainant is entitled to lost wages in the amount of \$27,750.00 and attorney's fees in the amount of \$6,040.00.

DISCUSSION

The Commission issued an Order of Default against Respondent on November 14, 2007; and ordered that a public hearing on the issue of damages be held. Pursuant to the default order, Respondent admits the allegations of age and perceived physical

handicap discrimination in the Charge of Discrimination, filed August 17, 2006. *Karla Payne and Roseland Christian Health Ministries, Inc.*, IHRC, 11591, Jan 27, 2003.

Complainant worked for Respondent as a waitress since January 7, 1984 and satisfactorily performed her job duties throughout that time. On or about June 29, 2006, Respondent's co-owner and manager, Frank Lombardo, discharged Complainant when he told Complainant in a loud and derogatory manner that she was too old and could not hear well and that she was to "get the fuck out of" his establishment.

DAMAGES

Back pay

As a civil rights violation was found, Complainant is presumptively entitled to back pay and reinstatement. *Loyola University v Human Rights Commission*, 149 Ill App3d 8, 500 NE 2d 639, 102 Ill Dec 746 (1st Dist 1986). Complainant does not seek reinstatement.

In calculating the amount of damages, Complainant is to be placed in the position in which she would have been but for the discriminatory act. *Clark v Human Rights Commission*, 141 Ill App3d 178 (1st Dist 1986).

Complainant requests 111 weeks of back pay for the period beginning June 29, 2006, until the time of public hearing on July 23, 2008. Complainant credibly testified that, since 1999 until she was discharged in 2006, her compensation from Respondent included \$150.00 per week in salary and \$100.00 per week in tips. Complainant said that Respondent began paying her salary in cash beginning in 1999 until the time of her discharge and that Respondent did not provide her with federal W-2 forms documenting her wages during that time. Complainant said that she worked every week during the year and never took a vacation.

Any ambiguity in calculating back pay damages must be resolved in Complainant's favor since Respondent's discriminatory actions gave rise to the

uncertainty. This principle is rigorously followed when a respondent has failed to participate in the litigation of this matter. *Clark v Human Rights Commission, supra, and Taylor and Amerienviromental, Inc.*, IHRC 11722, Feb 23, 2004.

Complainant is entitled to back pay in the amount of \$250.00 per week for 111 weeks up to the date of public hearing for a total of \$27,750.00.

Attorney's Fee Petition

After a finding of liability against Respondent, Complainant is entitled to reasonable attorney's fees and costs incurred in litigating the matter. The purpose of the fee award is to provide an effective means of access to the judicial process to victims of civil rights violations who might not otherwise have the means to retain counsel. *Clark and Champaign National Bank*, IHRC, 354(J), July 2, 1982. In *Clark and Champaign National Bank, supra*, the Commission set forth guidelines to be considered in awarding attorney's fees. The burden of proof for requesting attorney's fees rests with the Complainant.

Appropriate Hourly Rate

Complainant requests an award of attorney's fees incurred in the litigation of this case. Complainant submits the fee petition and signed statement of Attorney John C. Ireland, the record attorney in this matter, in support of this request. When considering a fee petition, it is first necessary to establish a reasonable hourly rate. An appropriate hourly rate is generally dependent upon the actual hourly rate the attorney charges, the experience of the attorney and the prevailing community rate for similar legal services. *Clark and Champaign National Bank, supra*.

Ireland asserts that he was admitted to practice law in the State of Illinois and the United States District Court for the Northern District of Illinois in November, 2004 and

that he is the principal of his own law firm. Ireland says he has spent the majority of his time practicing in the area of civil rights and employment discrimination.

Ireland describes his prior legal experience. Ireland worked as a law clerk and as an associate attorney for John P. DeRose and Associates from 2002-2005 and performed legal work for several short-term positions where he gained experience in class action and medical malpractice cases. Ireland worked for the personal injury firm of Pomper and Goodman, where he was in court every day for approximately nine months conducting one-two arbitration hearings each week. Ireland also worked as an associate attorney for the law firm, Foote, Meyers, Mielke and Flowers, where he billed at the rate of \$350.00 per hour. Ireland states that he has billed and been paid at the rate of \$350.00 per hour and that he has also billed at a rate of \$100.00 per hour for persons with reduced means of payment.

Ireland seeks a rate of \$200.00 per hour. Ireland maintains that the reasonableness of this rate is supported by several factors, one of which is a calculation pursuant to the *Laffey Matrix*, which Ireland maintains was created by the District of Columbia United States Attorney's Office to provide an official guideline for determination of reasonable attorney rates in fee-shifting cases, citing *Adcock-Ladd v. Secretary of Treasury*, 227 F.3d 343, 347 n.3 (6th Cir. 2000).

While Ireland might find a fee analysis pursuant to the *Laffey Matrix* helpful, cases before the Commission are analyzed pursuant to guidelines as set out in *Clark and Champaign National Bank*, *supra*, and I find no compelling reason to abandon this standard.

I find the hourly rate of \$200.00 per hour to be reasonable in light of Ireland's stated experience and current billing rate.

Reasonable Number of Hours Worked

Once the hourly rate is decided upon, the next step is to determine whether the hours claimed are justified. Complainant requests that Ireland be compensated for 30.2 hours of time expended in litigating this case. Ireland files an itemized list of specific work performed and time expenditures and states that he maintained contemporaneous time and expense records. The itemized record is sufficiently detailed to allow scrutiny of the time expenditures allocated for the specific work performed. I find the time expenditures and the specific work performed to be reasonable and necessary for the litigation of this matter.

Complainant is entitled to an award of attorney's fees in the amount of \$6,040.00 for 30.2 hours of work performed at the rate of \$200.00 per hour.

RECOMMENDATION

Based on the foregoing, it is recommended that the Commission:

- A. Award lost back pay damages in the amount of \$27,750.00;
- B. Award prejudgment interest on the amount in A to be calculated as set forth at 56 Ill.Admin.Code, Section 5300.1145;
- C. Order Respondent to cease and desist from discriminating on the bases of age and perceived disability;
- D. Award attorney's fees in the amount of \$6,040.00.

HUMAN RIGHTS COMMISSION

ENTERED: March 30, 2009

SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section